BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JONATHAN BROHAUGH) laimant VS.	D 1 1 005 004
KOCH TRUCK LINE, INC.	Docket No. 205,221
Respondent)	
KANSAS RISK SERVICES GROUP Insurance Carrier	
AND	
KANSAS WORKERS COMPENSATION FUND	

ORDER

Respondent appeals from a preliminary Order for Compensation entered by Administrative Law Judge Floyd V. Palmer. The Order, dated January 25, 1996, grants claimant's request for temporary total disability and medical benefits.

ISSUES

Respondent contends the evidence does not establish the injury arose out of claimant's employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon its review of the evidentiary record and after considering the arguments made by the parties, the Appeals Board finds that the Order by the Administrative Law Judge should be affirmed.

Claimant injured his back while rescuing his three-year-old daughter from a fire in the cab of his truck. Claimant was attaching the tarp to the load on his truck when he noticed smoke in the front of his truck. He ran to the cab and pulled his daughter out of the sleeper compartment. As he was pulling her out he fell and injured his back. Claimant had obtained permission from respondent to bring his daughter with him on the job.

Respondent contends that the injury arose from personal risk and, therefore, did not arise out of and in the course of claimant's employment. The Appeals Board disagrees. The risk was initially generated by conditions at claimant's employment, namely the fire in the cab of the truck which he was to drive. Even if the rescue of his daughter is to be considered a purely personal task and a personal risk, the source of the risk causing the injury should be considered dual. The Appeals Board therefore finds the claim should be considered compensable.

Respondent also contends that claimant failed to establish that the psychological injury arose out of and in the course of employment. The Appeals Board has previously held that this is not an issue over which the Appeals Board has jurisdiction on appeals from a preliminary order. This is so because the question is not whether the injury arose out of and in the course of employment but, instead, whether the psychological injury is traceable to an injury which arose out of and in the course of employment. Susan Cunningham v. Michael E. Michael, D.D.S. and Cincinnati Insurance Company, Docket No. 177,523 (1994). Having found that the original injury arose out of and in the course of employment, the decision to grant psychological treatment is not subject to review on an appeal from a preliminary order.

WHEREFORE, the Appeals Board finds that the preliminary Order entered by Administrative Law Judge Floyd V. Palmer dated January 25, 1996 should be, and the same is, hereby affirmed.

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Dated this	_ day of Ma	arch 1996.			
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c: Roger D. Fincher, Topeka, KS Stephen A. McManus, Kansas City, KS Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director